

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD J.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C23-5887-BAT

**ORDER REMANDING FOR FURTHER
PROCEEDINGS**

Plaintiff appeals the ALJ's decision finding that as of February 1, 2021 he is not disabled. For the reasons below, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

DISCUSSION

A. Medical Evidence

Plaintiff first contends the ALJ misevaluated the medical evidence. He argues on October 1, 2021, Huanyi Li, ARNP performed a psychiatric examination and diagnosed Plaintiff with unspecified depression disorder, ADHD and alcohol use disorder in remission. Dkt. 10. At 3. Ms. Liu noted Plaintiff was emotionally intense and started crying in the middle of the evaluation, showed tangential speech, jumped from topic to topic and needed redirection of topics for the

1 evaluation that the only medical opinion but concluded Plaintiff did not have mental functional
2 limitations.

3 Plaintiff argues the ALJ erroneously found Ms. Liu's opinion persuasive because her
4 opinion lacks supportability and is inconsistent with Plaintiff's treatment records. *Id* at 4.
5 Plaintiff provides no cogent explanation as to why the ALJ erred. Plaintiff has the burden of
6 proving harmful error and his conclusory statements fall far short of meeting this burden. Indeed,
7 Plaintiff makes his conclusory statement despite the fact Ms. Liu noted Plaintiff's social
8 functioning was within norms (has a significant other; used to go to AA meeting until Covid, has
9 good ability to get along with others, Tr. 939); (is independent in all areas of activities of daily
10 living, Tr. 940); (appeared alert, oriented and disoriented, no distress, calm, good eye-contact,
11 normal speech but rapid and pressured, normal emotional range, normal thought process, no
12 difficulty with attention or concentration, normal insight. Tr. 94-41); and (mainly normal
13 intellectual functioning, Tr. 941). Plaintiff also ignores Ms. Lui's opinion that his prognosis is
14 good and his conditions "are fairly treatable with medication management and psychotherapy.
15 The diagnoses mentioned above mildly interfere with quality of life and function at this time."
16 Tr. 942.

17 In short, Ms. Lui diagnosed Plaintiff with mental health conditions, stated they were
18 treatable with medications and therapy, and opined they would mildly affect his quality of life
19 and function. Plaintiff's conclusory statement that Ms. Lui's opinion is not supported by her own
20 treatment notes thus fails. Ms. Lui examined Plaintiff, administered a mental status examination,
21 made notes about Plaintiff's statements and his behavior during examination and concluded that
22 he is limited but not as limited as Plaintiff contends. The Court accordingly rejects Plaintiff's claim
23 that Ms. Lui's opinions are unsupported.

1 Plaintiff also argues Ms. Liu's opinion is inconsistent with his treatment records. In
2 support, Plaintiff lists treatment records regarding Plaintiff's physical impairments. These
3 records do not contradict Ms. Liu's opinion which focused on Plaintiff's psychological or mental
4 limitations.

5 Plaintiff also lists treatment records regarding his psychological condition. These records
6 also do not contradict Ms. Liu's opinions. Plaintiff indicates in February 2022, Dr. McBride
7 noted Plaintiff realizes his focus and attention are reduced due to ADHD when does not take his
8 ADHD medication, Adderall. *Id.* at 4. Dr. McBride diagnosed Plaintiff in June 2022 with
9 depressive disorder and chronic pain. *Id.* at 6. In September 2022, Dr. McBride noted Plaintiff's
10 ADHD symptoms recently worsened so Plaintiff restarted Adderall. *Id.* at 6. In August 2020, Dr.
11 Stanschor opined Plaintiff's mental functional abilities were adequate. In September and October
12 2021, Elizabeth Allen, LICSW observed Plaintiff was tense, depressed, anxious, tearful,
13 hypervertal and had fast speech. *Id.* at 5.

14 None of the psychological records that Plaintiff lists contain a functional assessment that
15 contradicts Ms. Liu's opinions, and Plaintiff admits as much by acknowledging Ms. Lui's
16 opinion is the only psychological assessment of Plaintiff's functional abilities that was performed
17 during the time period at issue, i.e., after January 31, 2021 when the ALJ found Plaintiff no
18 longer disabled. The Court accordingly rejects Plaintiff's argument that Ms. Lui's opinion is
19 inconsistent with Plaintiff's other mental health records.

20 Plaintiff also argues the ALJ misevaluated the medical evidence. His argument consists
21 of short statements about notes from Plaintiff's medical providers. As Plaintiff concedes, none of
22 these records assess Plaintiff's functioning, other than Ms. Lui's report as discussed above. Other
23 than contending the ALJ erroneously gave Ms. Lui's opinions weight, Plaintiff fails to detail how

1 and why the ALJ erred in evaluating the medical evidence. Plaintiff thus fails to establish error
2 and the Court accordingly affirms the ALJ's assessment of the medical evidence.

3 The Court notes Plaintiff states the medical evidence "is consistent with [Plaintiff's]
4 testimony but this statement does not show the ALJ misevaluated the medical evidence. The
5 Court also notes Plaintiff claims overall evidence shows he cannot perform work as the ALJ
6 found and the "ALJ's failure to properly evaluate all the medical evidence is harmful error."
7 Dkt. 10 at 7. This is a conclusory statement and the Court declines to do counsel's work and
8 attempt to argue for Plaintiff why the ALJ's decision should be reversed.

9 **B. Plaintiff's Testimony**

10 Plaintiff contends the ALJ erroneously rejected his testimony as inconsistent with the
11 medical evidence when "none of the limited medical evidence since February 2021" contradicts
12 his testimony. Dkt.10 at 8. Plaintiff presents nothing showing why this conclusory statement is
13 accurate and thus fails to meet his burden to show harmful error. He does not contest the ALJ's
14 findings that in February and April 2021 Plaintiff was examined and presented with no acute
15 distress regarding his hip replacement and hip problems, Tr. 47; Plaintiff's PSA antigen level
16 was normal by December 2021¹.; and Dr. Staley's opinion that Plaintiff can perform light work
17 is persuasive, *Id.* The Court finds Plaintiff fails to show the ALJ erred in finding Plaintiff's
18 testimony is inconsistent with the medical record and affirms the ALJ in this regard.

19 The ALJ also discounted Plaintiff's testimony as inconsistent with his activities of daily
20 living and evidence Plaintiff can perform light work. The ALJ found Plaintiff's ability to live
21 independently, cook meals, do laundry, drive, mow the lawn for short periods of time, shop and
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¹ Plaintiff also fails to explain why the "new" evidence he submitted showing an increase in PSA level would alter the determinations the ALJ made.

1 go to the library supports the determination Plaintiff can do light work. Tr. 47. Plaintiff argues
2 these activities are not transferrable to the workplace and he should not be penalized for trying to
3 live a normal life. The Court, however, cannot say the ALJ was unreasonable in finding
4 Plaintiff's activities evidence the ability to do light work (contrary to Plaintiff's claims) and thus
5 cannot say the ALJ erred in finding the activities tended to contradict Plaintiff's claim he is
6 disabled and unable to work.

7 Plaintiff challenges other reasons the ALJ mentioned in discounting his testimony. The
8 Court need not address these additional challenges because even if the ALJ erred, the error is
9 harmless as the ALJ provided at least one valid reason supported by substantial evidence to
10 discount Plaintiff's testimony.

11 **C. Lay Testimony**

12 Plaintiff contends the ALJ erred by rejecting the testimony that his mother and wife
13 provided testimony without providing any reason or rationale. Dkt. 10 at 14-16. The ALJ's
14 treatment of the lay testimony consists of the following statement: "while the regulations require
15 the undersigned to consider all evidence including statements from nonmedical sources, they do
16 not require the decision to articulate how such statements were considered." Tr. 44.

17 The Commissioner argues the ALJ is not required to provide "any analysis of the lay
18 testimony, "and any error the ALJ may have committed is harmless because the ALJ "credited
19 more reliable medical opinions from Dr. Staley who determined Plaintiff's limitations were not
20 as severe as Plaintiff's mother described." Dkt. 12 at 9-10.

21 The Court rejects the argument the ALJ need not articulate their consideration of the lay
22 witness testimony. An ALJ is required to determine RFC based upon all relevant evidence of
23 record; this includes observations made by a claimant's family, neighbors, friends, or other

1 person. *See* 20 C.F.R §§ 404.1454(a)(1), 404.1545(a)(3). That an ALJ can reject relevant lay
2 witness evidence without any reason is inconsistent with the Commissioner's obligation to
3 consider such evidence, and the rule the ALJ must provide some rationale in order for the Court
4 to meaningfully determine whether the ALJ's conclusions are free of legal error and supported
5 by substantial evidence. *See, e.g., Holohan v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001).

6 The Court also rejects the Commissioner's *post hoc* argument the ALJ properly rejected
7 Plaintiff's mother's testimony as inconsistent with Dr. Stely's opinion. The ALJ made no such
8 finding, and the Court declines to adopt the Commissioner's argument as the ALJ's finding when
9 the ALJ made no such finding. The Court also notes the Commissioner does not raise this *post*
10 *hoc* argument as a reason to support the ALJ's rejection of Plaintiff's wife's testimony.

11 CONCLUSION

12 The Court **REVERSES**, the Commissioner's final decision and **REMANDS** this case for
13 further administrative proceedings under sentence four of 42 U.S.C. § 405(g). Plaintiff argues the
14 Court should award benefits. However, further proceedings are necessary because the ALJ failed
15 to articulate his rationale regarding what weight the lay testimony should be given. This
16 determination is reserved to the ALJ, and one the Court declines to make in the first instance on
17 appeal.

18 The Court affirms the ALJ's assessment of the medical opinions of record and Plaintiff's
19 testimony and thus does not disturb those findings. On remand, the ALJ shall reassess the lay
20 testimony and articulate a sufficient basis and rationale for the assessment; expand the record and
21 redetermine residual functional capacity only as necessary and proceed to the remaining steps as
22 needed.

1 DATED this 12th day of March 2024.

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4 BRIAN A. TSUCHIDA
5 United States Magistrate Judge
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